

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: May 19, 2004

Division: Public Works

Bulk Item: Yes X No

Department: Facilities Maintenance J.K.

AGENDA ITEM WORDING: Approval to increase rent for Conch Cruisers, Inc., Salute Restaurant, Higgs Beach, in accordance to the Consumer Price Index (CPI) of 1.9% from \$5230.71 per month to \$5330.09 per month (\$99.38 per month additional).

ITEM BACKGROUND: On August 11, 2004, the second year of a two (2) five-year Lease Agreement with Conch Cruisers, Inc. will expire. In accordance with the original Lease Agreement, Article 4, the contract/agreement (lease) amount; may be adjusted annually in accordance with change in the Consumer Price Index (CPI), National Index for Wage Earners and Clerical Workers, and shall be based upon the annual average CPI computation from January 1 through December 31 of the previous year.

PREVIOUS RELEVANT BOCC ACTION: On August 12, 1998, the Board approved a 5-year Lease Agreement with Conch Cruisers, Inc. to operate the Higgs Beach Restaurant/concession. On July 17, 2002, the Board approved a Lease Amendment with Conch Cruisers, Inc. to provide Lessee the option to renew the Lease for two additional five (5) year terms, to close the restaurant between September 16 and October 15 of each year, and revise Ord. 13.5-3 (2) (C), Higgs Beach Park Regulations, in order to change restroom hours. On July 15, 2003, the Board approved Renewal Agreement to renew the Lease for the first of two (2) five-year terms; the first to commence on August 12, 2003, and terminate on August 11, 2008, and to increase the Lease amount in accordance to the Consumer Price Index (CPI) by 2.4% from \$5108.12 per month to \$5230.71 per month.

CONTRACT/AGREEMENT CHANGES: To increase the monthly rental in accordance to the Consumer Price Index (CPI) of 1.9% from \$5230.71 per month to \$5330.09 per month (\$99.38 per month additional).

STAFF RECOMMENDATIONS: Approval as stated above.

TOTAL COST: N/A

BUDGETED: Yes N/A

COST TO COUNTY: N/A

SOURCE OF FUNDS: Revenue

REVENUE PRODUCING: Yes X No **AMOUNT PER MONTH** \$5330.09
Year \$63,961.08

APPROVED BY: County Atty OMB/Purchasing Risk Management

DIVISION DIRECTOR APPROVAL: J.K. for D.A.
Dent Pierce, Director Public Works

DOCUMENTATION: Included X To Follow Not Required

DISPOSITION:

AGENDA ITEM # D-18

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract with: Conch Cruisers, Inc Contract #

Effective Date: August 11, 2004

Expiration Date: August 12, 2005

Contract Purpose/Description:
To increase monthly rental amount in accordance to annual average CPI of 1.9%

Contract Manager: Miguel Carbonell 4385 Facilities Maintenance #4
 (Name) (Ext.) (Department/Stop #)

for BOCC meeting on 5/19/04 Agenda Deadline: 5/4/04

CONTRACT COSTS

Total Dollar Value of Contract: \$ Revenue Current Year Portion: \$ N/A
Producing

Budgeted? Yes ☐ No ☐ Account Codes:

Grant: \$

County Match: \$

ADDITIONAL COSTS

Estimated Ongoing Costs: \$ /yr For:
 (Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW

	Date In	Changes Needed	Reviewer	Date Out
Division Director	<u>5/3/04</u>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<u>[Signature]</u>	<u>5/4/04</u>
Risk Management	<u>4/22/04</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>4/22/04</u>
O.M.B./Purchasing	<u>04/20/04</u>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	<u>[Signature]</u>	<u>4/22/04</u>
County Attorney	<u>4-13-04</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>4/22/04</u>

Comments: please attach Ethics clause

CONTRACT AMENDMENT
Salute Restaurant at Higgs Beach

This Contract Amendment is made and entered into this May 19, 2004, between the COUNTY OF MONROE and Conch Cruisers, Inc. in order to amend the agreement between the parties dated August 12, 1998, as amended on July 17, 2002, and Renewal Agreement dated July 15, 2003, copies incorporated hereto for reference, as follows:

1. In accordance with Article 2. of the July 15, 2003 Renewal Agreement: "The Lease amount shall increase by the Consumer Price Index (CPI), National Index for Wage Earners and Clerical Workers, and shall be based upon the Annual Average CPI computation from January 1 through December 31 of the previous year. The CPI increase shall be calculated for each additional year for the five-year period.
2. Rent, therefore, payable to Monroe County, shall increase by 1.9% from \$5230. 71 per month to \$5330.09 per month (\$99.38 per month additional).

In all other respects, the original agreement between the parties dated August 12, 1998, as amended on July 17, 2002 and Renewal Agreement dated July 15, 2003, remains in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal the day and year first written above.

(Seal)
Attest: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: _____
Deputy Clerk

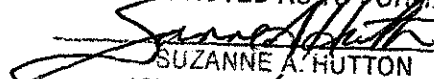
By: _____

Witness

Witness

By: _____

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:


SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY
Date 4/20/04

RENEWAL AGREEMENT
(Salute' Restaurant at Higgs Beach)

This Renewal Agreement is made and entered into this July 15, 2003, between the COUNTY OF MONROE and Conch Cruisers, Inc. in order to renew the Lease Agreement between the parties dated August 12, 1998, as amended on July 17, 2002, copies incorporated hereto for reference, as follows:

1. In accordance with Article 1. of the July 17, 2002 Lease Amendment, the Lessee exercises the option to renew the lease for the first of two (2) five-year terms; the first to commence on August 12, 2003, and terminate on August 11, 2008.
2. The Lease amount shall increase by the Consumer Price Index (CPI), National Index for Wage Earners and Clerical Workers, and shall be based upon the Annual Average CPI computation from January 1 through December 31 of the previous year. The CPI increase shall be calculated for each additional year for the five-year period.
3. Rent, therefore, payable to Monroe County shall increase by 2.4% from \$5108.12 per month to \$5230.71 per month.

In all other respects, the original agreement between the parties dated August 12, 1998, remains in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal the day and year first written above.

(Seal)

Attest: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: Isabel C. De Santis

Deputy Clerk

By: Lejia M. Spehar

Wm. J. Cardona
Witness

Conch Cruisers, Inc.

Harmon D. Lignat
Witness

By: Dawn M. Parrinello, President

Dawn Parrinello, President

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

BY: Suzanne A. Hutton

SUZANNE A. HUTTON

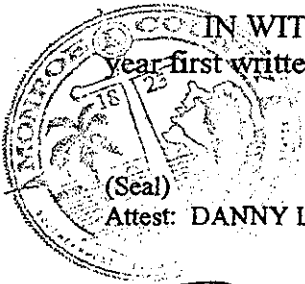
DATE

6/26/03

LEASE AMENDMENT
(Salute' Restaurant at Higgs Beach.)

THIS Amendment is made and entered into this 17th day of July 2002, between the COUNTY OF MONROE and CONCH CRUISER'S INC. in order to amend the Agreement dated August 12, 1998, (a copy of which is incorporated hereto by reference) as follows:

1. Revise paragraph 3 of the Lease to provide Lessee the option to renew the lease for two additional five (5) year terms; the first to commence, at Lessee's option, on August 12, 2003 (as presently provided in the lease); and the second term to commence, at Lessee's option, on August 12, 2008.
2. Revise paragraph 6(A) of the lease to provide: (1) Lessee shall be entitled to close the restaurant for three (3) weeks, between the dates September 16 and October 15 of each year; and (II) Public restrooms shall be opened at 7:00 a.m. and close at 11:00 p.m., Monday - Sunday, including holidays, pending change in County Ordinance #13.5-3(2)(C).
3. In all other respects, the original agreement between the parties dated August 12, 1998, remains in full force and effect.



IN WITNESS WHEREOF, the parties have hereunto set their hands and seal, the day and year first written above.

(Seal)
Attest: DANNY L. KOLHAGE, CLERK

By: *Gamela Hancock*
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: _____

Cindy Sauter
Witness to Conch Cruisers, Inc.

CONCH CRUISERS, INC.

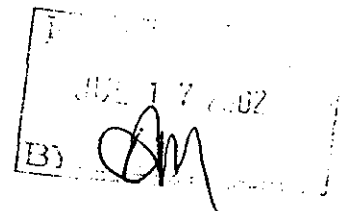
By: *Dawn M. Parrinello*
Dawn Parrinello, President

Shannon C. Lynn
Witness to Conch Cruisers, Inc.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

BY *Suzanne A. Hutton*
SUZANNE A. HUTTON

DATE 7/16/02



**SECTION THREE
NEGOTIATED LEASE AGREEMENT**

THIS lease, entered into on the 12th day of August, 1998, by and between the BOARD OF COUNTY COMMISSIONERS, MONROE COUNTY, FLORIDA (Lessor) and Conch Cruisers, Inc., Sal Parrinello (Lessee), whose address is 1601 Bahama Drive, Key West, Florida, 33040.

The parties to this lease hereby agree to the following:

1. This lease evidences the grants, covenants and agreements made between the parties with reference to the following described premises and as further identified in Exhibit "A".

Clarence S. Higgs Memorial Beach, Key West, Florida - including exclusive use of all existing facilities, restaurant, bath house, and storage areas, to have the exclusive right to provide and maintain a full service concession/restaurant, such as furnish food and beach concession and provide janitorial services to the public rest rooms inclusive of opening and closing and supplying paper products at Clarence S. Higgs Memorial Beach and maintain all equipment necessary for the operation of these facilities.

2. The Lessor hereby grants to the Lessee the exclusive right and privilege of operating and maintaining a full service concession/restaurant at Clarence S. Higgs Memorial Beach, Key West, Monroe County, Florida, for a term of five (5) years, said concession/restaurant to be located at the concrete building now situated upon said beach, and in as is condition. Square footage allocations shall be limited to the interior and enclosed patio area as referenced in Exhibit "A".
3. The Lessee may exercise an option to renew this lease for an additional five (5) years with written consent of the Board of County Commissioners, by giving Lessor written notice of their intention to exercise said option within sixty (60) days previous to the expiration of the original five (5) year term.
4. The Lessee, in consideration of the foregoing rights and privileges, does hereby covenant with the Lessor to pay rental fees as follows:

Year one (1): Monthly rent \$4,583.33 (\$55,000.00 per year)

Years two (2) thru five (5): Monthly rent \$4,910.00 (\$58,920.00 per year)

The contract/agreement (lease) amount agreed to herein may be adjusted annually in accordance with change in the Consumer Price Index (CPI), National Index for Wage Earners and Clerical Workers, and shall be based upon the annual average CPI computation from January 1 through December 31 of the previous year.

- A. Upon execution of this lease and prior to the Lessor's delivery of the premises to Lessee, Lessee shall deliver to the Lessor the sum of \$5083.33, for the first month's rent and damage deposit of \$500.00 and an irrevocable letter of credit from a local bank in the amount of \$4,910 for the last month's rent. Lessor shall not be required to post bond securing said advance rent or deposit.

- B. The first month's rent, paid in advance, shall be for the month of ~~October~~, 1998. Rent shall be due on the first day of each and every month thereafter, rent being payable in advance during the term of this lease. Lessee may assume occupancy as of August 13, 1998 for the purpose of coordinating demolition and renovation improvements, conditioned upon his full compliance with all terms of this lease, inclusive of insurance coverage effective as of said date. In addition to the foregoing rental payments, the Lessee covenants and agrees with the Lessor to pay State taxes, if any, and all utility charges, including but not limited to electric, water, sewer, and solid waste at said concession/restaurant, which shall be a result of the operation of the facilities granted under this lease. The Lessor reserves the right to terminate this lease for non-payment of rent by the Lessee for a period of fifteen (15) days or more.
5. In connection with the above demised properties, the Lessor covenants with the Lessee that conditioned on Lessee's performance and observance of Lessee's covenants herein, Lessee shall have quiet enjoyment and peaceable possession of the premises during the term of this lease. In the event the county elects to maintain and/or improve its properties in the vicinity of the leasehold herein, either by necessity, or by choice, such activity will not be considered as a breach of any covenant of this lease.
6. Lessee further covenants and agrees as follows:
- A. To keep open such concession/restaurant Monday-Sunday, including holidays, from 7:00AM-10:00PM, and shall not exceed the established beach hours in as specified in Monroe County Ordinance 13.5-3 (2)(E). Public rest rooms shall be opened at 7:00AM and closed at sunset, Monday-Sunday, including holidays, in accordance with Monroe County Ordinance 13.5-3(2)(C).
 - B. To furnish the necessary equipment, furnishing and fixtures needed to operate the concession/restaurant. All moveable equipment and furnishings shall remain the property of the Lessee and may be removed from the premises by Lessee at the termination of this lease agreement, with Lessor's consent. If Lessee fails to remove said moveable equipment or furnishings within ten (10) days after termination of this lease, said items shall then become the property of the Lessor.
 - C. Lessee shall provide full janitorial services for the public rest rooms inclusive of providing all janitorial supplies and paper products. Janitorial service frequency shall be on a daily basis to ensure rest rooms are maintained clean and sanitary. Rest rooms are to be inspected during the regular business day to ensure supplies are available and facility is clean and properly sanitized.
 - D. Lessee shall maintain a City and County Occupational License during the period of this lease.
 - E. Lessee agrees to keep the leased premises in a safe, clean, and well-maintained order at no expense to the Lessor. This provision is to be monitored by the Director of Public Facilities Maintenance or his representative.
 - F. Lessee agrees to operate his business in a business-like manner.

7. It is agreed by the parties hereto that Lessee may elect to sub-lease or assign the lease agreement only upon previous written consent of the Board of County Commissioners for Monroe County. The terms of this agreement shall be binding on the heirs, executors, administrators, sub-lessees and assigns of Lessee, which shall not be unreasonably withheld.
8. It is hereby covenanted, stipulated and agreed by and between the parties hereto that there shall, during the said demised term, be no mechanic's liens upon the concession/restaurant or improvements thereto; in case of any attempt to place a mechanic's lien on premises, the Lessee must pay off the same; and that if default in payment thereof shall continue for thirty (30) days after written notice, said Lessor shall have the right and privilege, at its option, to pay off the same or any portion of the same, and the amount so paid, including expenses, shall, at the option of the said Lessor, be so much additional rent due from said Lessee at the next rent due after such payment, with interest at the rate established by the Comptroller under Sec. 55.03, F.S., for the year in which the payment became overdue. Nothing in this paragraph is to be read as a waiver or authorization by the County of its constitutional and statutory immunity and right to have its property free of such liens
9. Alcoholic beverages may be sold within the enclosed restaurant and patio only, upon acquisition and maintaining proper licenses from local, state, and federal agencies. No carry-out sales of alcoholic beverages is permitted. Sales and consumption of alcoholic beverages must cease by 10:30 P.M.
10. Entertainment may be provided only in the enclosed restaurant and patio area. Any entertainment must be acoustic soft background music and must cease by 10:30 P.M.
11. Lessee shall be responsible for and provide all licenses required by all local, state and federal agencies, including Department of Health.
12. It is expressly covenanted between the parties hereto that the Lessee will not use, suffer nor permit any person to use in any manner whatsoever the said demised property, nor any portion thereof, for purposes calculated to injure the reputation of the premises or of the neighboring property, nor for any purpose or use in violation of the laws of the United States or of the State of Florida, or of the ordinances of Monroe County, Florida and that the Lessee will keep and save the Lessor forever harmless from any penalty or damage or charges imposed for any violation of any said laws, whether occasioned by neglect of Lessee, and that said Lessee will indemnify and save and keep harmless the Lessor against and from any loss, cost, damage and expense arising out of any accident or other occurrence, causing injury to any person or property whomsoever or whatsoever, and due directly or indirectly to the use of the premises, or any part thereof, by the Lessee.
13. It is further agreed that in no case shall the Lessor herein be liable, under any express or implied covenants in this lease agreement, for any damages whatsoever to the Lessee beyond the rent reserved by the Lease agreement accruing, for the act, or breach of covenant, for which damages may be sought to be recovered against said Lessor, and that in the event said Lessee shall be ousted from the possession of said property by reason of any defect in the title of said Lessor or said Lessor's authority to make this lease agreement, said Lessee shall not be required to pay rent under this lease agreement while

he is so deprived of the possession of said property, and that said Lessor shall not incur any liability of such ouster.

14. It is further mutually covenanted and agreed between the parties hereto that no waiver of a breach of any of the covenants of this lease agreement shall be construed to be a waiver of any succeeding breach of the same covenant.

5. The Lessee hereby covenants and agrees that he, his agents, employees or otherwise shall observe and obey all lawful rules and regulations which may from time to time during the term hereby promulgated and enforced by the Lessor at said beach.

The Lessor reserves the right hereunder to enter upon the premises at any reasonable time during normal beach hours for the purpose of inspecting said premises, and the Lessee hereby agrees to keep the premises at all times in a clean and sanitary condition, and not to maintain or keep upon said premises any properties or equipment not used in connection with the operation of said business, unless authorized by the Lessor to do so

The Lessee agrees not to make any major alterations to the building located on said premises, without first obtaining written consent of the Lessor to do so, which will not be unreasonably withheld. Such alterations shall be based on plans approved by the Director of Facilities Maintenance and shall be subject to all City and County Code provisions governing construction. Lessee shall be responsible for obtaining any permits required by any governmental agency.

The Lessee shall be responsible for maintaining the structure. The Lessee will keep the premises clean at all times and must meet all requirements for food handling as required by the Monroe County Department of Health. All site improvements shall be pre-approved by the Monroe County Board of County Commissioners.

The Lessee shall be responsible for applying and obtaining all permits necessary by all local, state, and federal agencies.

Lessee covenants and agrees to indemnify and hold harmless Monroe County Board of County Commissioners from any and all claims for bodily injury (including death), personal injury, and property damage (including property owned by Monroe County) and any other losses, damages, and expenses (including attorney's fees) which arise out of, in connection with, or by reason of the Lessee utilizing the property governed by this lease rental agreement. The extent of liability is in no way limited to, reduced, or lessened by the insurance requirements contained elsewhere within this agreement.

All property of any kind that may be on the premises during the continuance of this Lease shall be at the sole risk of the Lessee, the Lessor shall not be liable to the Lessee or any other person for any injury, loss, or damage to property to any person on the premises.

22. In the event that the demised premises, or the major part thereof are destroyed by fire, storm, or any other casualty, the Lessor at its option may forthwith repair the damage to such structure at its own cost and expense. The rental thereon shall cease until the completion of such repairs and the Lessor will immediately refund the pro rata part of any rentals paid in advance by the Lessee prior to such destruction. Should the premises be only partly destroyed, so that the major part thereof is usable by the Lessee, then the rental shall abate to the extent that the injured or damaged part bears to the whole of such premises and such injury or damage shall be restored by the Lessor as speedily as is practicable and upon the completion of such repairs, the full rental shall commence and the Lease shall then continue the balance of the term.
23. All written notices pursuant to this lease shall be forwarded to the following addresses:
- | | |
|-----------------------------------|-------------------------|
| Lessor: | Lessee: |
| Monroe County Public Works | Conch Cruisers, Inc. |
| Facilities Maintenance Department | Sal Parrinello |
| 3583 South Roosevelt Boulevard | 1601 Bahama Drive. |
| Key West, Florida 33040 | Key West, Florida 33040 |
24. If any dispute concerning this lease should arise between the Lessor and Lessee and which results in litigation, the prevailing party shall be entitled to payment of its reasonable attorney's fees and costs associated with said litigation from the losing party
25. The Lessee will be responsible for all necessary insurance coverage as indicated on the attached forms identified as GIR, GL, WC1, VL, GLLIQ, ARP, and all other requirements found to be in the best interest of Monroe County, as may be imposed by the Monroe County Risk Management Department. All insurance required coverages shall actively be maintained during the lease term.
26. This lease shall be governed by the laws of the State of Florida. Venue for any disputes arising under this agreement shall be in a court of competent jurisdiction in Monroe County, Florida.



IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: [Signature]
Mayor/Chairman

(Lessee)

Attest: DANNY L. KOLHAGE, CLERK

By: [Signature]

Witness

[Signature]
Witness

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

BY: [Signature]
RUZANNE A. HUTTON

DATE: 8/6/98